

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

CATHY BALLEW and CHARLES BALLEW,

PLAINTIFFS

Vs.

Docket No.

CV 19-2527

Jury Demanded

**OAK COURT MALL, LLC,
WASHINGTON PRIME GROUP, LP,
WASHINGTON PRIME PROPERTIES, LLC,
WASHINGTON PRIME PROPERTY
LIMITED PARTNERSHIP,
and WASHINGTON PRIME GROUP, INC.**

DEFENDANTS

COMPLAINT

COME NOW the Plaintiffs, Cathy Ballew and Charles Ballew, by and through counsel, Marc I. Baretz, and for their cause of action against the Defendants, all five of them, Oak Court Mall, LLC, Washington Prime Group, LP, Washington Prime Properties, LLC, Washington Prime Property Limited Partnership, and Washington Prime Group, Inc. (hereinafter “Defendants”) as follows:

JURISDICTION AND VENUE

1. Jurisdiction and venue in this case are proper in the Western District of Tennessee as the negligent acts and actions causing Plaintiff Cathy Ballew injuries occurred at the property location located at 4465 Poplar Avenue, Memphis, Shelby County, Tennessee.
2. There is complete diversity of citizenship between the parties pursuant to 28 U.S.C. §1332[2000]. The amount of damages in controversy exceeds \$75,000.00 exclusive of interests and costs.

PARTIES

3. Plaintiffs are and at all times were domiciled and citizens of Marion, Crittenden County, Arkansas. They are husband and wife.

4. Defendant Oak Court Mall, LLC, is a Delaware limited liability corporation doing business in Memphis, Shelby County, Tennessee.

5. Defendant Washington Prime Group, L.P., is an Indiana limited partnership doing business in Memphis, Shelby County, Tennessee. Its registered agent for service of process is CT Corporation, 300 Montvue Road, Knoxville, TN 37910.

6. Defendant Washington Prime Properties LLC was and is now a duly organized Delaware limited liability corporation doing business in Memphis, Shelby County, Tennessee. Its registered agent for service of process is CT Corporation, 300 Montvue Road, Knoxville, TN 37910.

7. Washington Prime Properties Limited Partnership was a Delaware limited partnership doing business in Memphis, Shelby County, Tennessee, which has become inactive on February 15, 2019.

8. Washington Prime Group, Inc. is an Indiana corporation doing business in Memphis, Shelby County, Tennessee. Its registered agent for service of process is CT Corporation System, 150 West Market Street, Suite 800, Indianapolis, Indiana 46204.

FACTS AND CAUSES OF ACTION

9. At the time of this occurrence Defendant Oak Court Mall, LLC was the title owner and remains the title owner of the Oak Court Mall located at 4465 Poplar Avenue in Memphis, Tennessee.

10. Plaintiff Cathy Ballew was an invitee upon said Oak Court Mall premises on September 1, 2018.

11. Upon information and belief Defendant Washington Prime Group L.P., Washington Prime Properties LLC, Washington Prime Property Limited Partnership and Washington Prime Group, Inc. (hereinafter “Washington Prime”) has either an ownership or leasehold interest and/or management responsibility of Oak Court Mall at the time of this occurrence.

12. Defendants Oak Court Mall LLC and Washington Prime (hereinafter “Defendants”) had the duty to maintain the commonly used public areas of the Oak Court Mall in a reasonably safe condition for patrons and invitees of the building and premises including Plaintiff Cathy Ballew. Defendants, and each of them, failed to maintain same in a reasonably safe conditions.

13. Plaintiff Cathy Ballew was lawfully present on the premises of the Oak Court Mall on the bottom floor on September 1, 2018 when she was caused to fall on the premises. The injuries to Plaintiff Cathy Ballew resulted therefrom were caused by the negligence of the Defendants in the maintenance of said premises and the negligence of Defendants in the ownership, operation and control of said premises.

14. In part, the Defendants caused to be maintained in the bottom floor a structure more specifically a putt-putt game situated in a portion of the floor which customers normally travel through to go to other businesses or services and restrooms on the premises by creating a physical structure on the premises for patrons and invitees to play on. Said structure is hazardous to the travelling public due to its location and design. In part, the putt-putt structure was so situated with adjacent flooring and carpeting that it visually coincided with the floor so as

to make it difficult to ascertain where the structure was and that it was elevated. Said structure was unreasonably dangerous, not sufficiently highlighted so as to make it difficult to ascertain the height differential between the structure and floor and blended in by similar coloring of the carpeting on the flooring. The structure should not have been located in a travelled area of the floor meant for such purposes.

15. Plaintiff Cathy Ballew was walking with a friend traveling in said area when she was caused to fall over the elevated putt-putt game that caused her to fall on the premises.

16. Defendants' caused this putt-putt game to be located in an area where the patrons travel to and it was in an unreasonably unsafe condition. Defendants allowed this hazardous condition to exist without posting any warning signs or roping off this unsafe condition. Such condition would have been obvious to employees of the Defendants had they inspected said area and they were on notice of same.

17. Defendants negligence including failure to maintain the premises in a safe and proper condition, failure to make adequate and timely inspection to the premises, causing and allowing the putt-putt game to be located and situated on the floor in such a manner to make it a hazard to persons travelling through when Defendants were aware of the condition; failure to place signs warning of the condition when Defendants knew or should have known that patrons were subject to not seeing the structure and/or the difference in elevation of the putt-putt game particularly as the structure blended in with the adjacent carpeting.

18. Defendants' were careless, negligent and/or strictly liable for maintaining the property of said premises in a hazardous and negligent condition in breach of their duties to Plaintiff Cathy Ballew who was invitee and patron of the Oak Court Mall as well as owed to others similarly situated.

19. Upon information and belief Defendants had actual notice of the dangerous and hazardous condition of said premises and that a trip and fall was foreseeable. Defendants had actual notice as its employees and security cameras could ascertain that the location of the putt-putt facility was not in a safe place or situated so as to allow persons to walk through that area without being aware of the putt-putt game's elevation. Further they had constructive notice of the dangerous and hazardous condition by having their agents on the premises who should have been able to identify this as an actual and potential hazard.

20. Actual notice that is claimed in that condition was caused and created by the Defendants, their agents, servants or employees who knew the dangerous and unsafe condition of the premises and they negligently permitted same to exist and negligently failed to warn persons on the premises of the dangers and unsafe condition.

21. The Defendants' negligence alleged above was the proximate cause of or aggravation of Plaintiff Cathey Ballew's injuries as she was caused to fall by the unreasonably unsafe and dangerous condition of the premises.

22. The Defendant failed to use the degree of care and caution that was required under the circumstance.

23. As a direct and proximate result of negligence, strictly liable conduct herein above described, the Plaintiff suffered and sustained other things and injury to her right shoulder and other permanent and disabling injuries caused by or aggravated her preexisting conditions, sustained the loss of enjoyment of life, pain and suffering in the past and will continue to undergo such pain and suffering in the future, has incurred medical expenses in the past and will continue to incur such expenses in the future all to her damages in excess of \$75,000.00 exclusive of interests and costs.

24. As a result of the above-described injuries to Cathy Ballew the Plaintiff Charles Ballew, her husband, sustained a loss of consortium, comfort and society which entitles to him to damages in an amount to be determined at trial.

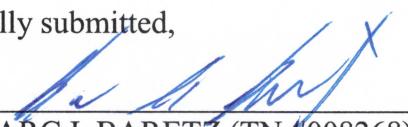
25. Plaintiff demands a jury trial.

WHEREFORE, the Plaintiff Cathy Ballew, individually, prays for judgment against the Defendants, jointly and severally, in the sum in excess of Seventy-five Thousand Dollars (\$75,000.00); the Plaintiff Charles Ballew, as husband of Cathy Ballew, prays that he receive judgment against the Defendants in a sum to be determined at trial; for cost and interest and for all other proper relief to which they may be entitled.

Plaintiffs demands a jury trial.

Respectfully submitted,

By:



MARC I. BARETZ (TN #008268)
110 Thompson Avenue
P. O. Box 1107
West Memphis, AR 72303
Tel. (870) 732-4102
Fax (870) 732-4100

ATTORNEY FOR PLAINTIFFS